TOM MILNER

IBLA 79-148 Decided January 23, 1980

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer. W 66405.

Affirmed as modified.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Drawings

   Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "Milner Productions" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a).

APPEARANCES: Thomas H. Milner, San Rafael, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Tom Milner has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 29, 1978, rejecting simultaneous oil and gas lease offer W 66405 for failure either to submit corporate qualification papers with his drawing entry card or to refer by serial number to the record where such papers had previously been filed.

The card was drawn first for parcel No. WY 1838 at a simultaneous oil and gas lease sale. The face of the card was made out in the name of "Milner Productions"; the reverse side, on which the offer and certifications were set forth, was completed by an illegible signature opposite the date.

In the statement of reasons for appeal appellant contends that Milner Productions is a sole proprietorship and as such is not subject to the requirement as to corporate qualifications. Appellant also submitted a signed affidavit that Milner Productions is a sole proprietorship owned by Thomas H. Milner.

[1] Oil and gas lease offers may be submitted only on behalf of individual citizens, associations of citizens, corporations or municipalities. 30 U.S.C. § 181 (1976). Departmental regulation 43 CFR 3102.1-1 provides in part:

> § 3102.1-1 Who may hold interests.
>
> Mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or any State thereof, which are authorized to hold such interest by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; or (d) municipalities. As used in this group, "association" includes "partnership."

Milner Productions is not an association of citizens. There is nothing in the law or regulations which would indicate that an unincorporated sole proprietorship in itself is a sufficient legal entity to make the required certifications and enter into the required contract. E.g., 43 CFR 3101.1-5; 3109.4-2. Appellant states no other person is involved. The offer must therefore meet the requirements for an individual offeror. It is mandated in 43 CFR 3112.2-1(a) that offers to lease be "signed and fully executed by the applicant or his duly authorized agent in his behalf" (Emphasis added).

In Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), the return address section of the card was competed "J. A. Winkler Agency" and the offer on the reverse side was signed "Joseph A. Winkler." The court held the word "agency" should have been treated as surplusage. The Department was instructed to issue the lease to Winkler as an individual.

From the card herein, however, it was not possible to determine the last name, first name, and middle initial of the offeror. The lease offer must be deemed not to have been "fully executed."

Strict compliance with the requirement of fully executing lease offers has been the policy of the Department. The rights of the second and third drawees, Irma Spear and Oklahoma Oil Company, must be protected. See McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1935). For example, lease offers have properly been rejected for failure to sign or date a DEC, Darrell J. Sekin, 40 IBLA 156 (1979), and for

incomplete address, Hartley L. Gordon, 32 IBLA 139 (1977). The offer herein must accordingly be rejected.

Appellant requests that, at least, his $10 filing fee be returned. As stated in Albert E. Mitchell III, 20 IBLA 302 (1975), the filing fee is "earned" at the time of the filing. It represents a portion of the reasonable cost of processing the lease offer and is not to be returned. See 43 U.S.C. § 1371 (1976); 31 U.S.C. § 483a (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Joseph W. Goss
Administrative Judge

I concur:

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While I agree that appellant's offer must be rejected, I wish to address in greater detail the question of whether a sole proprietorship is qualified to hold mineral leases under Federal law.

A sole proprietorship is not an alter ego of an individual, but is rather a specific independent entity. A proprietorship is "a business which is owned by a person who has either the legal right and the exclusive title, or dominion, or the ownership of that business." Shermco Industries, Inc. v. Secretary of U.S. Air Force, 432 F. Supp. 306, 314 (N.D. Tex. 1978). A proprietorship is not the individual. See Independent Electricians and Electrical Contractors Assoc., v. New Jersey Bd. of Examiners of Electrical Contractors, 54 N. J. 466, 256 A.2d 33, 38 (1969). Thus, when a proprietorship is the applicant for the oil and gas lease the question is not whether the individual could qualify for the lease, but whether a proprietorship is authorized under the statute and regulations to hold mineral leases. The answer, I would submit, is in the negative.

Section 1 of the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1976), permits four discrete entities to hold mineral leases: (1) citizens of the United States; (2) associations of such citizens; (3) corporations organized under the laws of the United States, or of any State or Territory thereof; and (4) municipalities (with respect to coal, oil, oil shale, or gas). The applicable regulation, 43 CFR 3102.1-1, with one emendation discussed infra, merely repeats the statutory listing. Thus, any entity attempting to acquire a mineral lease must be able to qualify under one of the four provisions of the statute.

A sole proprietorship is clearly not a municipality. Nor can a sole proprietorship be said to constitute a corporation. See Winkler v. Andrus, 594 F.2d 775, 776 (10th Cir. 1979). A sole proprietorship can not be an association of persons, since the very word "association" implies a plurality of individuals. 1/ Thus, unless a sole proprietorship can be metamorphosed into a "citizen" of the United States, within the meaning of the statute and regulations, a sole proprietorship is by both law and regulation prohibited from holding mineral leases.

1/ It was on this basis that the Associate Solicitor ruled that a partnership was qualified to hold leases. See Issuance of Mineral Leases to Partnerships, 74 I.D. 165, 167 (1967). This holding has been expressly codified in 43 CFR 3102.1-1.

While the term "citizen" when used in the Constitution and Federal statutes normally implies natural persons (see Austin v. United States, 40 F. Supp. 777 (E.D. Ill. 1941)), it must be recognized that in certain circumstances corporations, at least, have been deemed to come under the concept of "citizen." See, e.g., Swiss National Insurance Co. v. Miller, 267 U.S. 42, 46 (1925); but see Spencer v. Patey, 243 F. 555 (2nd Cir. 1917), holding that a joint-stock association was not a citizen. One must look to the context in which the word is used to determine what is encompassed in the term "citizen."

In Swiss National Insurance Co. v. Miller, supra, the United States Supreme Court examined the provision of the Act of June 5, 1920, 41 Stat. 977, amending the Trading with the Enemy Act of October 2, 1917, 40 Stat. 411, to determine whether as used in the context of the act, the term "citizen" would embrace a corporation. The Court noted that the statutory scheme established eight classes of people who could recover property which had been seized during the first World War. The first class consisted of citizens or subjects of any nation or state other than Germany, Austria, or Hungary. The term citizen, however, was not defined in the Act. The sixth listed class involved partnerships, associations, other unincorporated bodies of individuals, and corporations incorporated in any country outside of the United States, which were entirely owned by citizens of nations other than Germany, Austria, or Hungary. In rejecting the claim of a corporation, headquartered in Switzerland, but whose stock was held primarily by German nationals, that it should be treated in the first statutory class the Court placed particular emphasis on the fact that Congress had expressly provided for treatment of corporations in class 6. Thus, the Court noted:

> Had no clause 6 been inserted in the Act, possibly the words citizens or subjects of clause 1 might have been held to include corporations; but, with a specification of them as a separate class, it would violate an obviously sound rule to include them by construction in clause 1 also as citizens or subjects.

267 U.S. at 48.

The situation which the Court examined in Swiss National Insurance Co., supra, is clearly analogous to that presented by the instant appeal. As noted above, section 1 of the Mineral Leasing Act provided not merely that citizens of the United States could obtain a lease, it made express provision allowing both associations of citizens as well as corporations to acquire mineral leases. Inasmuch as Congress clearly felt that it was necessary to expressly provide that a corporation or an association of citizens could obtain mineral leases, it is impossible to interpret "citizen" as encompassing either

a corporation or an association of citizens. It is clear that Congress utilized "citizen" in its traditional sense, limiting its applicability to natural persons.

In the recent decision in Shermco Industries, Inc. v. Secretary of the U.S. Air Force, supra, the District Court held that the term "citizen" as used in the definition of an "individual" entitled under the Privacy Act, 5 U.S.C. § 552a(a)(5) (1976), to gain access to records, did not embrace either corporations or proprietorships. While this decision was heavily based on the legislative history of the Privacy Act, I feel it provides added support for the view that, as used in section 1 of the Mineral Leasing Act, supra, the term "citizen" should be construed to be limited to natural persons.

I think it equally clear that the regulations do not contemplate that a sole proprietorship can acquire mineral leases. In the case of both corporations and associations, detailed statements of interests and qualifications are required to be submitted with the offer. See 43 CFR 3102.3-1(a) and 3102.4-1. The purpose of these disclosure provisions is to assist both in the determination of total acreage holdings and in the discovery of possible violations of the multiple filing prohibitions. There is no requirement for such disclosures when an individual files on his or her own behalf.

Thus, if a sole proprietorship were treated merely as an individual there would be no requirement of any disclosure. Since it is axiomatic that the name of the proprietorship need not consist of any part of the name of the individual who controls the proprietorship, the task which would be required for BLM personnel to determine whether the acreage or multiple filing violations have occurred would be enormous. I think it clear that the statute does not authorize nor do the regulations contemplate that a sole proprietorship may hold mineral leases.

With this in mind, I believe that the decision of the Tenth Circuit Court of Appeals in Winkler v. Andrus, supra, should be more critically examined. In that case the court reversed a decision of this Board which had affirmed the rejection of an offer because the DEC stated that the applicant was "Joseph A. Winkler Agency," but the card had been signed by Joseph A. Winkler in an individual capacity. The court construed the Board decision, reported as 24 IBLA 380 (1976), as holding that the use of the term "agency" implied that a corporation existed and that the statement of qualifications required by 43 CFR 3102.4-1 should have been filed.

In reversing the Board's decision, the Tenth Circuit Court of Appeals noted that the "agency" was a sole proprietorship. Id. at

776. It assumed, without examining the question, that a sole proprietorship was qualified to hold a mineral lease. For the reasons set forth above, I feel that such an assumption was unwarranted. In the absence of an express examination of this question by the court, I do not think that we should treat the decision in Winkler v. Andrus, supra, as dispositive of this issue.

For these reasons, I concur in the denial of this appeal.

James L. Burski
Administrative Judge

Editor's note: There is no page 126 in Volume 45.